IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 283 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANILKUMAR FERUMAL JAIN

Versus

STATE OF GUJARAT

Appearance:

MR EE SAIYED for Petitioner

Mr K G Sheth, APP for Respondent No. 1

MR RS PANJWANI for Respondent No. 2

MR MTM HAKIM for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 30/04/2001

ORAL JUDGEMENT

The petitioner above-named, being the original accused in Criminal case No. 3723/97 before the learned

Judicial Magistrate First Class, vadodara, has preferred this Criminal Revision Application under section 397 of the Criminal Procedure Code, 1973 (for short, 'the Code') challenging the judgment and order dated 27.6.2000 recorded by the learned Addl.Sessions Judge, Vadodara in Criminal Appeal No.99/99 dismissing the said criminal appeal of the present petitioner and confirming the judgment and conviction order against the petitioner recorded by the learned Magistrate, in the above referred Criminal Case. The learned Magistrate has convicted the present petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to suffer S.I. for six months and to pay fine of Rs.40,000/-. The present petitioner was further directed to undergo further S.I. for 30 days in default of payment of fine. The learned Magistrate has further directed that out of the aforesaid amount of fine of Rs.40,000/-, Rs.20,000/- be paid to the original complainant-respondent no.2 herein as compensation. So far as the Sessions Court is concerned, learned Addl.Sessions Judge had confirmed the order of conviction passed by the learned Magistrate with respect to the petitioner. However, the learned Addl.Sessions Judge directed that the jail imprisonment may be confirmed and the amount of fine was ordered to be reduced from Rs.40,000/- to Rs.5,000/- on the strength that under the provisions made in the Criminal Procedure Code, the learned Magistrate could not have imposed fine of an amount of more than Rs.5,000/-. The learned Addl.Sessions Judge also directed that in case the present petitioner has paid up the amount of fine, the amount of Rs.5,000/- shall be deducted from that amount and the rest be refunded to the petitioner. The learned Sessions Judge has further directed that the order of the learned Magistrate awarding compensation is confirmed.

2. Feeling aggrieved by the aforesaid conviction order of the two courts below, the petitioner-original accused No.1 has preferred this Revision Application. It has been mainly contended here that the learned Magistrate as well as the learned Sessions Judge have committed serious error in law in convicting the present petitioner. That the trial court as well as the learned Sessions Judge have both committed error in holding that the aforesaid amount mentioned in the cheque was due at the relevant point of time. That on the whole, the judgment and conviction orders are erroneous and illegal and deserve to be set aside. It is, therefore, prayed that the present application be allowed, judgments and conviction orders of the two courts below be quashed and set aside and the present petitioner may be ordered to be

acquitted from the aforesaid offence.

3. On receiving the Revision Application, urgent show cause notice was issued. Subsequently rule appears to have been issued and in response to the said rule, Mr K G Sheth, learned APP appears for respondent no.1-State and Mr R S Panjwani, learned Advocate appears for respondent no.2. I have heard the learned Advocates for the parties and have perused the papers.

4. Learned Advocate for the petitioner has argued the matter at length, that on two different dates, two cheques have been issued each for Rs.40,000/-. That the first cheque was issued on 27.6.1997 and the second was issued on 25.7.1997. He has further argued that the notice relates to the first cheque issued on 27.6.1997. It has also been contended that the amount being consideration of the cheque was nota received by the present petitioner. That the said amount appears to have been paid by the original complainant to some another person and not to the petitioner, and, therefore, the cheque was without consideration and, therefore, no offence is made out against the petitioner.

5. This aspect of the case has been considered at length by the learned Magistrate in para 10 of the judgment. There he has made it clear that the cheque was a bearer cheque issued to the petitioner. That one Ashokbhai had come to collect the cheque on behalf of the petitioner and, therefore, the cheque was entrusted to Ashokbhai by the original complainant. That thereafter, the cheque was in fact handed over to the petitioner and as per the evidence on record, it is clear that the said cheque bears rubber stamp and the signature of the petitioner which clearly shows that the amount of cheque was received by the petitioner himself and not by Ashokbhai. On this strength, the trial court found that it was not necessary for the complainant to examine Ashokbhai as witness. Here also, Mr E E Saiyed, learned Advocate had argued at length that the original consideration for the first cheque was in the hands of Ashokbhai. The petitioner has not received the said amount. It would be clear here that the learned Magistrate has dealt with this issue in detail. The learned Magistrate has also considered the cheque issued by the original complainant to the petitioner. The learned Magistrate has also considered the endorsement at the back of the cheque showing the rubber stamp of the petitioner and also the signature of the petitioner on the back of the cheque showing that signatory of the said endorsement had received payment of the said cheque.

6. The aforesaid finding of fact has been approved and confirmed by the learned Addl.Sessions Judge during the course of his judgment. Therefore, the aforesaid finding of fact has been recorded by the learned Magistrate and it has been confirmed by the learned Addl.Sessions Judge. In that view of the matter, when the two courts have recorded concurrent finding that payment is made to the petitioner by the original complainant, then, in that event, it is not open to this court to differ from the aforesaid fact of finding. Mr Saiyed, learned advocate arguing the matter for the original accused has not been able to show that the said findings recorded by the two courts below are illegal and perverse It is not his argument that the said findings of fact have been recorded by the two courts without any evidence on record. When the findings of facts are in consonance with the evidence on record, again it is not open for this Court, exercising revisional jurisdiction to differ from the view taken by the two courts below.

7. In that view of the matter, I am of the view that the petitioner had already received consideration of the cheques issued by him in favour of the original complainant and, therefore, when the petitioner had issued cheques in favour of the original complainant against the aforesaid dues, then it cannot be said that the cheques issued by him on 27.6.1997 as well as on 25.7.1997 bearing Nos. 0050113 and 0050125 were without consideration. Once it is found that the aforesaid two cheques are not without consideration but they were issued against the consideration received by the petitioner from the original complainant under a cheque referred to hereinabove, then the petitioner was bound to see that the cheques issued by him are honoured. In case, the petitioner could not make arrangement for encashment of the aforesaid two cheques issued by him to the original complainant, he had still an opportunity to make good in his bank balance subsequent to the issuance of the cheques. Even if it could not be done soon after the cheques were isssued, the petitioner has opportunity to make good by depositing appropriate amount in his bank account at the stage when he was served with notice and even at that stage he did not deposit the amount nor did he make any attempt to pay the said amount to the petitioner within the period stipulated by law for such payment. Therefore, even after the expiry of the period of notice, the amount has remained unpaid and, therefore, the offence has been made out.

8. Learned Magistrate has also observed in his

judgment that the first cheque dated 27.6.1997 was issued by the petitioner and since it was dishonoured the petitioner had taken it back and thereafter, second cheque was issued on 25.7.1997 for the same amount of Rs.40,000/-. Even that cheque was also dishonoured and, therefore, a complaint was required to be filed. Therefore, it cannot be said that the respondent-complainant claimed total amount of the said two cheques. In fact, he has been claiming Rs.40,000/- only under the aforesaid cheques and not Rs.80,000/- (Rs.40,000 + 40,000/-).

9. As said above, the two courts below have recorded finding that Ashokbhai was appearing in the matter on behalf of the petitioner and he was deputed by the petitioner for the collection of the fund in question from the original complainant and, therefore, Ashokbhai acted as an agent of the petitioner and he was not an agent of the original complainant. Therefore, the two courts below were right in observing that it was for the petitioner to examine Ashokbhai as his witness. The two courts below were also right in observing that it was not necessary on the part of the original complainant to examine Ashokbhai as his witness. It is recorded by the two courts below that the amount of Rs.40,000/- was actually received by the petitioner from the original complainant and, therefore, as said above, the cheques issued by the petitioner on 27.6.1997 or 25.7.1997, cannot be said to be without consideration.

10. After all this Court is exercising its revisional jurisdiction and, therefore, the power, function and jurisdiction of this court are very limited. It is not open to this court to re-appreciate the evidence already appreciated by the two courts below. In the case of Pathumma v. Muhammad, reported in AIR 1986 SC 1436, the Hon'ble Supreme Court has observed that the High Court was not justified in substituting its own view for that of the learned Magistrate on a question of fact. In the present case also, the two courts below have recorded finding of fact that the aforesaid cheques issued by the petitioner were against the consideration received by him from the original complainant. The two courts below have also recorded finding of fact that the petitioner had actually received the said consideration under the cheque issued to the original complainant in view of the endorsement made on the back of the cheque issued by the original complainant in favour of the present petitioner. In that view of the matter, this being criminal revision, it would not be open for this court to take a view different from the view recorded by the two courts below

on the finding of fact, which is ultimately based on a proper appreciation of evidence and which is supported by reasons recorded by the two courts.

11. I am, therefore, of the view that the two courts below have taken a view on the basis of evidence produced before them, The findings recorded by them are not against the evidence before them. Therefore, the finding of fact cannot be treated to be illegal. Therefore, it is not open for this Court to interfere with the said finding of fact.

12. In that view of the matter, there is no merit in this Revision and, therefore, it deserves to be dismissed. For the foregoing reasons, this revision application is dismissed. The judgments and orders of the two courts are confirmed. Rule discharged.

13. An amount of Rs.15,000/- is said to have been deposited in this court by the petitioner above named in pursuance of the order of the learned Sessions Judge and further in pursuance of the orders of this Court, it shall be transmitted to the Court of the learned Judicial Magistrate First Class, Vadodara for doing needful in the matter. Four weeks' time is granted to the petitioner for surrender to jail, at the request of the learned Advocate for the petitioner.

30.4.2001 [D P Buch, J.]
msp